BOON SIEW KAM v. SATISH SELVANATHAN & ORS

HIGH COURT MALAYA, KUALA LUMPUR
YEOH WEE SIAM J
[CIVIL SUIT NO: 22NCVC-561-12-2014]
5 APRIL 2016

CIVIL PROCEDURE: *Adjournment – Application for – Seeking adjournment after case set down for hearing – Medical condition – Letters from doctor stating plaintiff unfit to travel – Whether properly addressed to court – Whether adjournment ought to be allowed*

The plaintiff, an advocate and solicitor of the Republic of Singapore who worked at Shanghai, China, sought and obtained an injunction against the defendants pending the disposal of a trial. After the second case management, the court fixed a hearing date. However, the court received the letter from the plaintiff ('the plaintiff's letter') requesting for an adjournment of the hearing date on the ground that the plaintiff was not fit to travel for three months, therefore, the plaintiff was not able to attend court in Malaysia. A copy of the doctor's letter ('doctor's first letter') was enclosed together with the plaintiff's letter. The defendants objected the plaintiff's application for adjournment on the grounds, *inter alia*, that the doctor's first letter was deficient and lacking, *ie* instead of addressing the court, the doctor's first letter was addressed 'to whom it may concern'. The plaintiff then tendered another letter ('doctor's second letter'), addressed not to the court, but again it was stated 'to whom it may concern' to inform, *inter alia*, that the plaintiff was unfit to travel for the next three months. In the circumstances, the court did not allow the plaintiff's application. The issue that arose for determination was whether there were adequate reasons to refuse the adjournment.

Held (disallowing adjournment of hearing):

(1) The doctor's two letters were not addressed to the court, but 'to whom it may concern'. There was no statement by the doctor to the effect that the plaintiff was unfit to attend court for the hearing. Further, there was no document to prove that the plaintiff was on medical leave. Since the plaintiff's doctor had confirmed that the plaintiff was fit to work, and the plaintiff had not shown proof that she was on medical leave and not working, there appeared to be no good reason for the plaintiff to be absent from court for the hearing. (paras 26 & 29)

(2) The plaintiff ought to know and should show due respect to the Malaysian High Court and ensured that the doctor's two letters were properly addressed to this court to confirm that the plaintiff was medically unfit to attend court for the hearing dates, and further state that the doctor's two letters were certificates which were valid for

absence from court attendance. Since the two letters of the plaintiff's doctor did not comply with the requirements of reg. 24A and Form 14 as contained in the Schedule to the Medical Regulations 1974, the two doctor's letters could not be accepted by this court in order to grant the adjournment of the hearing to the plaintiff. (paras 33 & 38)

(3) The present case was not a part-heard case; the hearing had not begun. Also, there was no interlocutory matter to be heard by the court which must be adjourned. (para 42)

(4) Based on the two letters of the plaintiff's doctor, and the scanty and inadequate material given by the plaintiff, the court was not satisfied that the plaintiff was on medical leave or was unfit to attend court for the hearing. Therefore, the plaintiff's application for adjournment was not allowed. (para 43)

Case(s) referred to:

Datuk Seri Tiong King Sing v. Datuk Seri Ong Tee Keat & Anor [2014] 1 LNS 1073 CA ***(refd)***

Lee Ah Tee v. Ong Tiow Pheng & Ors [1984] 1 CLJ 26; [1984] 1 CLJ (Rep) 187 FC ***(refd)***

Sheikh Abdul Aziz Sheikh Shukor & Ors v. Sheikh Mustapha Sheikh Shukor & Ors [2004] 3 CLJ 108 CA ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 67(1)
Medical Regulations 1974, reg. 24A, Schedule Form 14

For the plaintiff - S Ravindran & SN Tan; M/s Sreenevasan Young
For the 1st & 2nd defendants - Wong Leong Hong; M/s The Law Office of LH Wong

Reported by Sandra Gabriel

JUDGMENT

Yeoh Wee Siam J:

Appeal

[1] The plaintiff filed the notice of appeal on 17 March 2016 in respect of my ruling given in chambers during final case management ("CM") on 2 March 2016 not to allow the plaintiff's oral application for an adjournment of the hearing of this case which has been fixed on 18 to 22 April 2016.

Whether The CM Ruling Is Appealable

[2] At the outset, it should be noted that the plaintiff's appeal did not arise from any judgment, order or decision given by this court pursuant to any interlocutory matter brought for the court's adjudication by way of a notice of application. Neither has the plaintiff's writ of summons and statement of

claim been heard and disposed of by this court. As such, thus far, no judicial decision has been made by this court that finally disposes of the rights of the parties. It raises therefore, the serious question as to whether this CM ruling is appealable.

[3] Section 67(1) of the Courts of Judicature Act 1964 provides as follows:

> The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought.

[4] In *Datuk Seri Tiong King Sing v. Datuk Seri Ong Tee Keat & Anor* [2014] 1 LNS 1073, the Court of Appeal considered the right of appeal on a ruling, and held that the appeal on a ruling made in the course of a trial is not competent and non-appealable. The appeal was dismissed. Azahar Mohamed JCA (as he then was), *inter alia*, stated as follows:

> [11] Now, section 67 of the CJA provides that civil appeals may be lodged against a "judgment" or "order" of the High Court. The terms "judgment" or "order" are not defined in the CJA but they are collectively referred to as "decision" as can be seen in section 3 of the CJA which states:
>
> > 'Decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.
>
> [12] More significant still is that section 3 of the CJA qualifies a "decision" so that it "does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of parties ...
>
> [14] ... if appeals are permitted against rulings made in the midst of a trial, this will affect a fair and expeditious disposal of court proceedings due to the likelihood for untimely and academic appeals as well as possible stays of proceedings pending such appeals ... if the plaintiff is dissatisfied with the final outcome of his action against the 4th defendant, he may still raise the ruling of the learned High Court judge as part of his grounds of appeal.

[5] The above decision of the Court of Appeal was recently upheld by the Federal Court on 7 March 2016.

[6] Be that as it may, for the present case, in view of the notice of appeal filed by the plaintiff, I shall now proceed to give the grounds for my CM ruling.

A **Brief Facts**

[7] The plaintiff (NRIC No. 810831-14-5062) is a Malaysian but residing at Block 407, Hougang Avenue 10, #12-1116 Singapore 530407 (encl. 8). She is an advocate and solicitor of the Republic of Singapore and practises as a partner in a global law firm based in Singapore. She is currently working
B in Shanghai, China.

[8] The first defendant is a private equity investor, who holds a dual citizenship of the Republic of Sri Lanka and Great Britain.

[9] The second defendant, an international psychologist, is the wife of the
C first defendant. She is a citizen of the United States of America.

[10] Both defendants aver that their last known address was at BT 33-2 The Binjai on the Park, 16 Persiaran KLCC, 50088 Kuala Lumpur. However, their respective affidavits in reply (encls. 22 and 23) disclose that the defendants now have an address in Mumbai, India. Both defendants allege
D that they have sizable public profiles and standing particularly in India (see defendants' summary of case).

[11] By consent of both parties, the plaintiff's claim against the third defendant was withdrawn on 30 December 2014 and struck out by the court, with no liberty to file afresh and no order as to costs.
E

[12] The plaintiff and the first defendant first met at the Singapore Oxbridge Boat Race Ball on 31 March 2013. They developed a physical relationship which ended sometime in June 2013.

[13] The plaintiff averred that the defendants have pursued a course of
F conduct, including sending and/or authoring several emails which amount to harassment, and have caused her anxiety, distress and loss.

[14] The plaintiff is praying for an injunction against the defendants from all their acts complained of, and for damages, interests and costs.

G **[15]** On 8 April 2015, the court granted the plaintiff an injunction to restrain the defendants from any conduct which amounts to harassment of the plaintiff, including the publication of correspondence against the plaintiff, until the disposal of the trial (encl. 7).

First CM

H

[16] This case was transferred from another court, ie, NCVC3, to this court, NCVC4, on 16 November 2015.

[17] During the first CM of the case before me on 2 December 2015, apart from giving the court's directions for all trial documents to be filed, I had
I also fixed this case for hearing on 11 to 15 April 2016.

[18] However, during the second CM before me on 7 December 2015, upon the application of counsel for the plaintiff, and with no objection from counsel for the defendants, the hearing dates were vacated. I then fixed the new hearing dates on 18 to 22 April 2016 after obtaining the confirmation of both counsels that the dates are suitable. I informed both counsels that since this case is an old case that had been registered in December 2014, it must be expedited for disposal.

Plaintiff's Application By Letter For Adjournment

[19] On 24 February 2016 this court received the letter of counsel for the plaintiff dated the same day requesting for an adjournment of the hearing on the ground that the plaintiff had a fall weeks before that and suffered a fracture of her right second rib and spine. The plaintiff was advised by her doctor that she was not fit to travel for three months. A copy of the doctor's letter dated 20 February 2016 ("doctor's first letter") was enclosed.

[20] I directed the court Registrar to inform both parties that the matter would be considered by the court during the next CM on 2 March 2016.

[21] On the next day, I received the letter of counsel for the defendants dated 25 April 2016 objecting to the plaintiff's application for adjournment. The grounds of objection were that the reasons given by the plaintiff's doctor were deficient and lacking, for example, instead of addressing the court, the doctor's first letter was addressed "to whom it may concern", there was no rubber stamp to show the full name of the doctor and his designation, and there was no statement stating that the plaintiff was medically unfit to be present in court on the hearing dates fixed. Furthermore, since the plaintiff is based in Shanghai to work there and because the plaintiff is now in Singapore, the plaintiff's employer, K & L Gates LLC, should confirm that the plaintiff is on medical leave for three months, and confirm the validity of the plaintiff's injury and the plaintiff's inability to attend court for the hearing dates fixed.

Court's Ruling Given On 2 March 2016

[22] On 2 March 2016, counsel for the plaintiff tendered another letter from the plaintiff's doctor dated 26 February 2015 ("doctor's second letter"), this time with the rubber stamp stating the doctor's full name and designation, addressed not to the court, but again "to whom it may concern" to inform, *inter alia*, that the plaintiff is unfit to travel for the next three months.

[23] After considering the two letters of the plaintiff's doctor, and the oral submissions of both counsels, I ruled that the plaintiff's application for an adjournment of the hearing on 18 to 22 April 2016 should not be allowed.

Grounds For Court's Ruling

[24] The doctor's first letter, *inter alia*, states as follows:

20 February 2016

To Whom It May Concern

Boon Siew Kam

DOB: 31 Aug 1981

This lady had a fall a couple of weeks ago and sustained fractures of the Right second rib and the lumbar spine.

As such, she is UNFIT to travel for the next three (3) months.

Diagnosis

1. Traumatic Right 2nd rib fracture

2. L1 spine compression fracture

Dr P Thiagarajan

Consultant Orthopaedic Surgeon.

[25] The doctor's second letter, *inter alia*, states as follows:

26 February 2016

To Whom It May Concern

Re: Boon Siew Kam (DOB: 31 August 1981)

Ms Boon Siew Kam is currently in China. She had an accident a couple of weeks ago in China and hurt her back and chest.

I have assessed and reviewed her. Her X-rays and scans confirm that she has sustained fractures of the right second rib (together with a slight lung puncture) and the lumbar spine Compression traumatic L1 fracture.

As such, she is UNFIT to travel for the next three (3) months.

Air travel could lead to aggravation of the punctured lungs and sudden impact or jerking movement can precipitate paralysis amongst other potential complications. As the fracture of the spine is significant I have advised her to minimize the complication and this will most probably lead to long-term disability as the compression will lead to stress loading of the other vertebrae.

She is not unfit to work if the distance between her home and her work place does not require extensive travel.

Diagnosis

1. Traumatic Right 2nd rib fracture with pneumothorax

2. L1 spine compression fracture

Dr P Thiagarajan MBBS., FRCS., M.Ch.(Liv)

P.Thiagarajan (Raj) MBBS, FRCS, FICS, M.Ch.Orth, FAMS

Consultant Orthopaedic Surgeon

ORTHOPAEDIC SPORTS MEDICINE PTE LTD

Suite 13-14 Mt Elizabeth Medical Centre

3 Mt Elizabeth, Singapore 228510

Tel: 6887 3044 Fax: 6887 3312

Email: raj@sportsmedicine.com.sg.

[26] As pointed out by counsel for the defendants, the doctor's two letters were not addressed to the court, but "to whom they may concern". There is no statement by the doctor to the effect that the plaintiff is unfit to attend court for the hearing.

[27] Counsel for the plaintiff could not answer my question as to when was the date of the plaintiff's accident. He relied on the plaintiff's doctor's two letters which nonchalantly state that the plaintiff had an accident "a couple of weeks ago". The court is therefore left guessing as to the date of the plaintiff's injury and the period of the plaintiff's unfitness to attend court. The CM on that day was on 2 March 2016. The hearing had been fixed on 18 to 22 April 2016. Without any evidence of the plaintiff's date of accident, the court does not know the ageing period of the plaintiff's injury in order to decide whether to adjourn the hearing.

[28] I observe that the plaintiff's doctor is based at the Orthopaedic Sports Medicine Pte Ltd in Mount Elizabeth Medical Centre in Singapore. In the doctor's second letter, he stated that air travel could lead to aggravation of the plaintiff's injuries. However, what is puzzling and unsatisfactory is that the plaintiff, who had the fall in China, could fly back to Singapore to see the doctor, not only for the first time, but also for a subsequent time for assessment and review (see doctor's second letter). The court does not know if the travel to Singapore for the doctor's review was for the second time, or for even more times than that. I take judicial notice of the fact that the average flight time from Shanghai to Singapore, one way, is about five hours 20 minutes, and the average flight time from Shanghai to Kuala Lumpur is about the same, being five hours and 30 minutes. If the plaintiff was able to fly from Shanghai to Singapore at least twice thus far, if not more, I do not see any good reason as to why she is unable to fly to Kuala Lumpur for the hearing. This is in view of the fact that the doctor's second letter confirms that the plaintiff is "not unfit to work", which means the plaintiff is fit to work.

[29] As contended by counsel for the defendants, there is no document to prove that the plaintiff is on medical leave. The plaintiff's employer has not given any letter to confirm that she is on medical leave and not working. Since the plaintiff's doctor has confirmed that the plaintiff is fit to work, and

A the plaintiff has not shown proof that she is on medical leave and not working, there appears to be no good reason for the plaintiff to be absent from court for the hearing.

[30] Counsel for the defendants referred to the Electronic Practice Directions of the Supreme Court of Singapore ("e - PD") which, *inter alia*, B provides comprehensively the requirements of providing the court with a medical certificate in proper form should a person who is required to attend court wishes to absent himself on medical grounds.

[31] Paragraph 14 of the e-PD states as follows:

C 14. Absence from Court on medical grounds

(1) If:

(a) any party to proceedings;

(b) any witness;

D (c) any counsel; or

(d) the Public Prosecutor or his deputy,

is required to attend Court and wishes to absent himself from Court on medical grounds, he must provide the Court with an original medical certificate. **The medical certificate must be in the proper form and contain** E **the information and particulars required by sub-paragraphs (2) to (5)**.

(2) A medical certificate issued by a Government hospital or clinic may be in the pre-printed form produced by the Ministry of Health, a sample of which may be found at Form 1 of Appendix A of these Practice Directions. A medical certificate issued by a restructured F hospital or specialist centre may also be in a pre-printed form similar to the sample which appears at Form 1. The pre-printed medical certificate must:

(a) be completely and properly filled in;

G (b) contain the name of the medical practitioner who issued the medical certificate;

(c) state the name of the hospital or clinic in which the medical practitioner practises;

(d) **indicate that the person to whom the certificate is issued is** H **unfit to attend Court, and specify the date(s) on which he is unfit to attend Court**;

(e) be signed in full by the medical practitioner (and not merely initialled); and

(f) be authenticated by a rubber stamp showing the medical I practitioner's full name and his designation in the hospital or clinic, as the case may be.

(3) **If a medical certificate is not in Form 1, the medical certificate should**:

(a) **be addressed to "Registrar, Supreme Court" (and not "whoever-it-may-concern")**;

(b) identify clearly the medical practitioner who issued the certificate;

(c) state the name of the hospital or clinic at which it was issued;

(d) be signed in full by the medical practitioner (and not merely initialled);

(e) be authenticated by a rubber stamp showing the medical practitioner's full name and designation;

(f) contain a diagnosis of the patient concerned (unless the diagnosis cannot or should not normally be disclosed);

(g) **contain a statement to the effect that the person to whom the certificate is issued is medically unfit to attend Court, and specify the date(s) on which the person is unfit to attend Court**; and

(h) **bear the date on which it was written and, where this differs from the date of consultation, this must be clearly disclosed**.

(4) If any portion of the information set out in sub-paragraph (3) is not found in the medical certificate itself, such information may be included in a memorandum which should be attached to the medical certificate. This memorandum must:

(a) identify clearly the medical practitioner who issued the memorandum;

(b) contain the name of the hospital or clinic at which it was issued;

(c) be signed in full by the medical practitioner (and not merely initialled); and

(d) be authenticated by a rubber stamp showing the medical practitioner's full name and designation.

(5) All information and details in any medical certificate or memorandum must be clearly and legibly printed.

(6) *If the directions set out in sub-paragraphs (2) to (5) are not complied with, the Court may reject the medical certificate and decline to excuse the attendance of the person to whom the medical certificate was issued. The Court may then take any action it deems appropriate*.

(7) This paragraph shall apply to all hearings in the Supreme Court, whether in open Court or in Chambers.

(8) This paragraph shall apply to both civil and criminal proceedings. (emphasis added).

[32] The Specimen Government Medical Certificate provided by the e-PD, *inter alia*, requires the doctor to state whether the "certificate is valid/not valid for absence from court attendance".

[33] I agree with the submission of counsel for the plaintiff that the Singapore e-PD does not apply to this Malaysian Court. However, in my opinion, the plaintiff, being an advocate and solicitor in a global firm in Singapore, and the plaintiff's doctor, being a Consultant Orthopaedic Surgeon practising at the Mt Elizabeth Medical Centre in Singapore who would in the usual course of practice issue medical certificates for patients who are unfit to attend court, ought to know and should show due respect to the Malaysian High Court and ensure that the doctor's two letters are properly addressed to this court to confirm whether the plaintiff is medically unfit to attend court for the hearing dates, and further state that the doctor's two letters are certificates which are valid for absence from court attendance.

[34] In Malaysia, the Practice Directions on applications for adjournment of a hearing are found in the following:

> Arahan Amalan Hakim Besar Malaya Bil. 2 Tahun 2011 dated 7.4.2011 where in paragraph 2.3.4 it is stated:
>
> 2.3.4 Tertakluk kepada Arahan Amalan Ketua Hakim Negara Bil 1/2008 dan Surat Ketua Hakim Negara bertarikh 14 Julai 2009, Mahkamah boleh membenarkan penangguhan atas alasan kesihatan atau kecemasan.
>
> Arahan Amalan Ketua Hakim Negara Bil. 1/2008, where in paragraph 3, *inter alia*, it is stated:
>
> 3. Penangguhan Oleh Mahkamah
>
> Seseorang Hakim/Pesuruhjaya Kehakiman Mahkamah Tinggi, Hakim Mahkamah Sesyen, Timbalan Pendaftar, Penolong Kanan Pendaftar dan Majistret hendaklah mengelak daripada menangguh kes-kes yang telah ditetapkan.
>
> Letter of the Chief Registrar of the Federal Court, Malaysia dated 20.4.2008 to all High Court Judges ("CR's letter") which, *inter alia*, states the following:
>
> KES-KES TERTANGGUH
>
> Berikutan surat edaran Y.A.A. Ketua Hakim Negara bil. K.H.N. 47 bertarikh 10 April 2000, bersama-sama ini disertakan salinan P.U.(A) 376 Tahun 1977 (Lampiran A). Sehubungan dengan ini perkataan-perkataan "Sijil sakit hendaklah mengikut Pekeliling Ketua Pendaftar bertarikh 9.11.1999 (Peraturan-Peraturan Perubatan (Pindaan) 1997 P.U.(A) 376)" di perenggan 5(iv) surat tersebut hendaklah dibaca sebagai "Sijil sakit hendaklah mengikut Pekeliling Ketua Pendaftar bertarikh 9.11.1996 (Peraturan-Peraturan Perubatan (Pindaan) 1977 P.U.(A) 376)".

[35] By way of the Medical (Amendment) Regulations 1977 [P.U.(A) 376 of 1977 made on 18 July 1977), the new reg. 24A ("regulation 24A") was enacted to provide as follows:

> Certificate of unfitness to attend Court. 24A. A certificate of unfitness to attend Court as a witness shall be in Form 14 of the Schedule hereto.

[36] Form 14 in the Schedule, made under reg. 24A, provides the following format to be adhered to for a certificate of unfitness to attend court:

> CERTIFICATE OF UNFITNESS TO ATTEND COURT
>
> To ... (the Presiding Officer)
>
> ... Court
>
> ...
>
> I hereby certify that I have examined ...
>
> NRIC No ... address ... and find that in my opinion *he / she will be unfit to attend Court to give evidence *on / for the period from ... to ...
>
> 2. *He / She is suffering from ...
>
> Any other remarks:
>
> Date ... .
> Signature of medical Practitioner
>
> Name of practitioner ...
> Address ...
> ...
>
> NOTE:
>
> 1. *Delete whichever is inapplicable.
>
> 2. Paragraph 2 is to be filled only with the consent of the patient.

[37] Regulation 24A applies to a witness' unfitness to attend court. There appears to be no provision applicable to a party of a case who is unfit to attend court. However, it is reasonable to conclude that reg. 24A would apply to the plaintiff since the plaintiff, apart from being a party, is required to attend court as a witness to prosecute her own case.

[38] It is clear that the two letters of the plaintiff's doctor do not comply with the requirements of reg. 24A and Form 14 as contained in the Schedule to the Medical Regulations 1974. Hence, the two doctor's letters cannot be accepted by this court in order to grant the adjournment of the hearing to the plaintiff.

[39] A check with the court records does not show that there is a letter from Ketua Hakim Negara dated 14 July 2009 as referred to in Arahan Amalan Bil. 2 Tahun 2011. However, the letter of Ketua Hakim Negara dated 20 July 2009 on "last minute postponements", *inter alia*, states as follows:

A It matters not who requested for the adjournment, be it from the lawyers, Federal Counsels, Deputy Public Prosecutors or from the Court, the public will still conclude, that it is the Court who is delaying the proceedings.

In fact, it is unfair to have the blame imposed solely on the Courts.

B In order to transform this inaccurate perception, I urge all Judges and Judicial Officers to be strict in granting last minute postponements without reasonable notice. Bear in mind the Chief Justice's Practice Direction No. 1/2008 and the decision of Hashim Yeop Sani FJ in *Lee Ah Tee v. Ong Tiow Pheng & Ors* [1984] 1 CLJ (Rep) 187 and Gopal Sri Ram JCA (as he then was) in *Sheikh Abdul Aziz Sheikh Shukor & Ors v. Sheikh* C *Mustapha Sheikh Shukor & Ors* [2004] 3 CLJ 108 regarding postponement of cases.

Remember, granting postponement is a judicial discretion. Exercise your judicial discretion wisely.

D **[40]** In *Lee Ah Tee v. Ong Tiow Pheng & Ors* [1984] 1 CLJ 26; [1984] 1 CLJ (Rep) 187, a case where it is "not really a case of refusing an application for adjournment but a case of refusing to further adjourn the hearing after a number of adjournments granted previously", the Federal Court dismissed the appellant's appeal against the learned Judicial Commissioner's decision not to allow an adjournment. Hashim Yeop Sani FJ, *inter alia*, stated follows: E

The discretion of the Judge to allow or refuse an application for adjournment was a subject dealt with in depth by the Court of Appeal in *Dick v. Piller* [1943] All ER 627. We agree to and adopt the following principles as regards the discretion in allowing or refusing an adjournment:

F (1) Whether or not a party should be granted an adjournment is wholly at the discretion of the Judge. He would exercise the discretion solely upon his view of the facts.

(2) *Prima Facie* this discretion is unfettered.

(3) The question to ask in any particular case is whether on the facts G there are adequate or sufficient reasons to refuse the adjournment.

(4) Although an appellate Court has power to interfere with the Judge's decision in regard to the granting of an adjournment, it would refrain from doing so unless it appears that such discretion has been exercised in a way which tended to show that all necessary matters H were not taken into consideration or the decision was otherwise arbitrarily made.

(5) An appellate Court ought to be very slow to interfere with the exercise of the discretion. But if it appears that the result of the order made below would be to defeat the rights of the parties altogether or that there would be an injustice to one or the other I of the parties then the appellate Court has power and indeed a duty to review the exercise of the discretion.

[41] The above principles were adopted by the Court of Appeal in *Sheikh Abdul Aziz Sheikh Shukor & Ors v. Sheikh Mustapha Sheikh Shukor & Ors* [2004] 3 CLJ 108. In that case, the learned judge refused the appellants' application for adjournment (of the application by the first and second respondents to amend the injunction obtained by the appellants) and proceeded with the hearing and gave an order as prayed for in the summons. The Court of Appeal dismissed the appeal. Gopal Sri Ram JCA, *inter alia*, stated as follows:

> [1] Whether an adjournment should or should not be granted is a matter entirely within the discretion of the court to which the application is made. The burden is on the applicant to place before the court sufficient material upon which the discretion may be exercised in his favour. (pp 110 g, 111 a, c-d, f & 112a)
>
> [2] in the present case, there was insufficient material before the learned judge to enable him to exercise his discretion in favour of the plaintiffs. (p 112 b-c).

[42] The above two cases can be distinguished from the present case. Firstly, this case is not a part-heard case; the hearing has not begun yet. Secondly, there is no interlocutory matter to be heard by this court which must be adjourned.

[43] In the present case, based on the two letters of the plaintiff's doctor, and the scanty and inadequate material given by the plaintiff, this court is not satisfied that the plaintiff is on medical leave or is unfit to attend court for the hearing. In exercise of the court's discretion, I therefore did not allow the plaintiff's oral application for an adjournment of the hearing.

[44] If the plaintiff is not ready to proceed with this case, she can always withdraw this case and ask for liberty to file afresh. She can then have the luxury of time to decide when she is ready to prosecute the defendants. After all, the plaintiff's purported cause of action only arose in 2013. The plaintiff's claim would still be within the limitation period and not be time-barred even if she were to file afresh.

[45] It is clear that the plaintiff's case has exceeded nine months in age, it being about 15 months old in the court's ageing report. The plaintiff's case must be disposed of and not remain in this court as part of the backlog of old cases. This court is currently disposing of new cases registered in January to March 2016, which are targeted to be disposed of within nine months from the date of registration (see also the Practice Direction of the Chief Judge Malaya No. 2 of 2014 on the timelines for CM and hearing of cases).

[46] Finally, it should be stressed here that there is no notice of application filed by the plaintiff for the adjournment of the hearing. As such, there is no affidavit on record to confirm as evidence the two letters of the plaintiff's doctor and their contents, and to give sufficient facts for the court's

consideration. Whatever was informed to the court by both counsels were merely statements from the Bar, and oral submissions for the plaintiff's oral application for adjournment. This is therefore no concrete evidence before this court that the plaintiff is unfit to attend court for the hearing.

[47] Based on the above considerations, I therefore ruled that an adjournment of the hearing cannot be allowed.